IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3461 of 2007()

CRIME NO.250/07 OF HOSDURG POLICE STATION.

PETITIONER/1ST ACCUSED

BOBY A. MANIKOTH, S/O. ARAVINDAN MANIKOTH, AGED 25 YEARS, SAFEENA QUARTERS, KOVVALPALLY, KANHANGAD, EDITOR, LATEST DAILY, KASARAGOD DISTRICT.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTING S.H.O., HOSDURG POLICE STATION, KASARAGOD DISTRICT, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY D.G.P. SRI. P.G. THAMPY.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, ALONG WITH BA NO. 3571 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NOs. 3461 & 3571 of 2007

Dated this the 20th day of June, 2007

ORDER

These petitions are filed by accused 1 and 2 in the same crime registered, inter alia, under Sec.307 read with Sec.34 of the IPC. The 1st accused i.e., the petitioner in B.A.No.3461/07 is the son and the 2nd accused is his father. The 2nd accused is the Editor of a newspaper by name 'Latest". The crux of the allegations is that the petitioners had indulged in a culpable attempt to cause death of the de facto complainant/the victim. It is alleged that the de facto complainant was shot at by the accused using a licensed revolver in the name of the wife of the 2nd accused i.e., the mother of the 1st accused.

2. The learned counsel for the petitioners submits that the allegations are nothing but a tissue of lies. The real incident did not take place in the manner alleged by the police at all. The real incident was an attack on the office of the

newspaper 'Latest' by some miscreants as a retaliation against the newspaper publishing a news item against an activist of the ruling political party. The miscreants had thrown stones at the office. This had resulted in the wife of the 2nd accused firing shots in the air to deter them from the violent acts. Later, when an attempt was made by the 1st accused and his mother to chase the one who had fired, there was an incident obliging the wife of the 2nd accused to fire shots in the air. This incident has been blown out of proportion to make a totally false version against both the accused. The learned counsel for the petitioners submits that the 1st accused had filed a complaint before the Hosdurg Police Station on the very next morning giving all details of the real incident. Suppressing that, a false complaint has been obtained from the alleged victim in this case i.e., the de facto complainant and the crime has been registered. The 2nd accused was arrested on 25/5/07. He continues in custody from that date. He may be enlarged on bail now, it is prayed. The 1st accused submits that he has been unnecessarily arrayed as an accused in the course of investigation. In the F.I.R. there is no whisper of an allegation against the 1st accused.

3. Both counsel submit that the police are acting at the behest of their political masters and are vexatiously proceeding against the petitioners. In these circumstances, it is prayed that anticipatory bail may be granted to the 1st accused and regular bail may be granted to the 2nd accused.

4. At this early stage of the investigation, I shall scrupulously avoid any detailed reference to the facts and shall avoid any expression of opinion on merits about the acceptability of the allegations or the credibility of the data collected. Both versions are there before court. That the wife of the 2nd accused was obliged to fire shots in the air to deter the miscreants is the admitted case of the petitioners. The nature of injuries have to be examined in the light of the admitted stand taken by the accused. Less said about the injuries, the better. The gun shot injury described in the wound certificate is an apology for a gun shot injury. The Doctor who issued the wound certificate and examined the victim has not been questioned so far. In the nature of the injury found on the person of the victim one would have expected the Investigator to question the Doctor at the earliest to find out whether there is any semblance of truth in

the allegation. In the F.I.R. there is no reference to the 1st accused at all. The fairly specific allegation therein is that the 2nd accused had used the revolver. The Case Diary reveals that the present attempt is to make it appear that it was the 1st accused who pointed the revolver at the victim. I take note of the contention of the petitioners that the 2nd accused has suffers from such physical disability that the allegation that he fired the shots does not stand a chance of acceptance before any authority and that is the reason why the allegations are now altered. The victim who allegedly suffered the gun shot injury makes a complaint belatedly. He goes to his house and sleeps peacefully to come back to complain on the next day.

5. I shall restrain myself considering the stage of investigation. I am convinced that this is an eminently fit case where anticipatory bail must be granted to the 1st accused and regular bail to the 2nd accused.

6. In the result, B.A.No.3461/07 is allowed. Following directions are issued in favour of the 1st accused.

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 27/6/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 28/6/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 27/6/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 27/6/07.

7. B.A.No.3571/06 is allowed. The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall execute a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge